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IN THE

# SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1955.

No. 60.

LOUIS BERRA,
Petitioner,

v.

UNITED STATES OF AMERICA.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit.

## SECOND SUPPLEMENTAL BRIEF FOR PETITIONER.

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## SECOND SUPPLEMENTAL BRIEF FOR PETITIONER.

### ARGUMENT.

This brief is being filed to advise the Court of the death on October 20, 1955, at St. Louis, Missouri, of petitioner Dillon in **Dillon v. United States**, No. 37, this Term, in which certiorari was granted on April 25, 1955. At first glance the reader might wonder what reason there could be prompting petitioner Berra in the instant case to bring this matter to the Court's attention, perhaps even before

the respective parties in that case have done so. This action is here taken in the light of this Court's well established precedent that upon the suggestion of petitioner Dillon's death the writ of certiorari, previously granted, will be dismised, **Singer et al. v. United States**, 328 U. S. 338; **United States v. Johnson**, 319 U. S. 503. It will be recalled that the main question on which petitioner Dillon's writ was granted is equally present in the instant case, namely, the necessity of a misdemeanor instruction under Section 3616 (a) in a felony prosecution for income tax evasion under Section 145 (b) of the 1939 Internal Revenue Code; also, it should be noted that to this extent (because of the question common to both cases) the government does not oppose certiorari in the petitioner's case. Therefore, petitioner submits that, the importance of resolving the question to the administration of justice having been once recognized by this Court, certiorari should be granted in the instant case to settle this still vital question; it would seem immaterial to the administration of justice whether this is done under the name of **Dillon v. United States** or **Berra v. United States**. For this reason in addition to those previously stated in the briefs heretofore filed, petitioner submits that certiorari should be granted on the entire case to review the several questions herein presented.

Respectfully submitted,

STANLEY M. ROSENBLUM,
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Counsel for Petitioner.